

**COVER NOTE**

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from           Secretariat  
to             The Convention

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**Subject :     Contribution by Mr John Cushnahan, alternate member of the Convention:  
              - “Praesidium Draft Constitution”**

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The Secretary-General of the Convention has received the contribution annexed hereto from  
Mr John Cushnahan, alternate member of the Convention.

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**Praesidium Draft Constitution**  
**A response by John Cushnahan MEP**  
**Member of the European Parliament Delegation to the Convention**

The draft constitution presented by the Praesidium on May 27th does not provide the basis for consensus within the Convention. Without consensus, the opportunity to exert major influence on the subsequent IGC negotiations will be lost. Additionally, if the current proposals at the core of the Praesidium text were to form the basis for the next revision of the Treaties, it is highly unlikely that the amended Treaty would be ratified in all member states.

While there are many positive proposals in the Praesidium draft, a number of areas of concern need to be addressed, including the institutional proposals and the foreign policy proposals.

Firstly, the institutional proposals strengthen the power of the larger member states and consequently threaten the interests of the EU's smaller countries, contrary to the modalities of the EU since its foundation.

Secondly, while the proposals on foreign policy contain some positive new elements, it would seem that the EU has not learnt sufficient lessons from the debacle during the Iraq crisis when the EU was deeply divided.

**1. Concerns of Small Member States**

**a) A Permanent President of the European Council?**

No one would deny that the current system of rotating the EU Presidency every six months needs to be reformed. However, the Praesidium proposal on this issue fundamentally alters the institutional balance. This strengthens intergovernmentalism at the expense of the community approach. In the proposed institutional set-up, the European Council President would be appointed by a qualified majority vote in the European Council. The President of the Commission would also effectively be appointed by the Council because the European Parliament would only be able to vote on a single candidate nominated by the Council. The EU Foreign Minister would be appointed in a similar manner.

The net effect of these proposals would be to strengthen the Council, especially the larger members states, weaken the Commission, and the European Parliament would be virtually ignored because it has no role in the selection/election process for the new posts of President of the Council and Minister for Foreign Affairs.

Consideration should be given to amending the text along the following lines,

**Firstly** the powers and role of the new Council President should be set out in detail, so that he/she would function more as a chairperson, supported by team presidencies, and would not replicate and therefore undermine the role of the President of the Commission or the EU Minister for Foreign Affairs. This would go some way to allaying the fears of small member states.

**Secondly**, consideration should be given to the precise role of the Secretary General of the Council, so as to guarantee continuity. In particular, he/she should perform this task and no other (which is not the case at present).

**Thirdly**, the name of the proposed President of the Council should be submitted to the European Parliament for approval.

#### **b) President of the Commission**

If smaller EU countries are to be reassured that the creation of a Permanent President of the Council will not undermine the role of the Commission, then the procedure for electing the Commission President and the manner in which the Commission is structured and operates is crucial.

The current Praesidium proposal that the European Council would propose a single candidate to the European Parliament for its approval/rejection is woefully inadequate. Such a procedure does not provide sufficient legitimacy for the Commission President and weakens the Commission as a whole.

The European Parliament is the only directly elected democratic EU institution. Therefore it can confer real democratic legitimacy on the Commission. A two-stage process should be considered for the election of the President of the Commission.

The European Council should submit a list of names to the European Parliament to which the European Parliament can add further names. The European Parliament could then act as "a primary" by selecting two candidates from this list. The names of these two candidates could then be submitted to European voters on the same day as the European Parliament election takes place and indeed they could be part of the same ballot paper.

#### **c) Size of the Commission**

There is no reason why there should not be one Commissioner per Member State provided it does not weaken the role of the Commission or undermine its efficiency. For example a small country like Ireland has 30 government ministers - 15 Ministers of Cabinet rank and 15 Ministers of State outside the Cabinet.

The Commission President should be allowed to appoint members of the Commission from a list of names provided by each member state. He/she could then select 12-15 members from the overall college to operate as an inner cabinet, to ensure administrative efficiency without undermining the constitutional and legal collegiate nature of the Commission as a whole.

## **2. EU Foreign Policy**

To avoid a repetition of the Foreign Policy debacle which occurred during the Iraq crisis, it is imperative that Foreign Policy, including CFSP but excluding defence, should be decided by qualified majority voting. The Praesidium's proposals that Foreign Policy should be adopted by unanimity in both the European Council and the Council of Ministers will result in a weak, hesitant policy and more likely political stalemate.

The present ineffectual decision making procedures would continue under the Praesidium's proposals and will become even more cumbersome in an enlarged Europe. It is insufficient, as proposed in the Praesidium's text that the Member States "consult one another within the Council

and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach".

Additionally, greater coherence could be given to EU Foreign Policy if the EU Minister for Foreign Affairs was supported by a single diplomatic service. The EU Minister for Foreign Affairs should also be given the leading role in terms of crisis management. At times of emergency the ability to produce a rapid response will be critical. Structures facilitating this and based on the need for consultation and accountability should provide the same freedom to act as afforded to the UN Secretary General in similar circumstances. Consequently, the EU Foreign Secretary must be provided with sufficient budgetary and personnel resources to discharge his/her role and a single diplomatic service would facilitate this task.

Furthermore, the role of the European Parliament in CFSP should be enhanced in a number of ways. The Praesidium draft text merely stipulates that "the European Parliament shall be regularly consulted on the main aspects and basic choices of the CFSP" and its evolution. The European Minister for Foreign Affairs should be answerable in writing to the European Parliament for the whole range of his responsibilities and activities.

The European Parliament should be consulted on all CFSP instruments and its assent should be required for any international agreement concluded by the EU, especially for those international agreements which establish an institutional framework, or that have legislative or budgetary implications. When concluding international agreements, it is essential that the European Minister for Foreign Affairs should participate in the Union's negotiating team and that the European Parliament is consulted on these matters. A special negotiating committee should be set-up composed of an equal number of representatives from the Foreign Affairs Council and the European Parliament and should be consulted on all matters in relation to the conclusion of an international agreement between the Union and third states or international organisations. It would also be highly desirable for members of the European Parliament to be incorporated into EU delegations for international conferences and fora.

Furthermore, it is essential that genuine substance should be given to the democracy clauses contained in the Union's association and trade agreements. To this aim, an Interinstitutional Code of Conduct should be drawn up to govern the relations between the Union and the third countries to which the democracy clause is applicable.

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